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9 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 Jorge Bautista-Avalos,

11 Petitioner,

12 v.

13 Michael Bernacke, Field Office Director,
14 ERO Salt Lake City, et al.,

15 Respondents.

Case No. 2:25-cv-01987-RFB-BNW

**Federal Respondents' Response to
Petitioner's Petition for Writ of Habeas
Corpus, ECF No. 1**

16 The Federal Respondents hereby submit this Response to Petitioner's Petition for
17 Writ of Habeas Corpus, (ECF No. 1).

18 **I. Introduction**

19 Petitioner challenges the Department of Homeland Security's ("DHS") detention
20 authority, contending that his custody is governed by 8 U.S.C. § 1226(a) rather than §
21 1225(b)(2)(A). This is not a novel question; identical arguments have recently been litigated
22 in parallel proceedings before this Court and other district courts.

23 For the reasons stated below—and as set forth more fully in the government's prior
24 filing in *Daniel Lucero Ortiz v. Michael Bernacke*, et al., No. 2:25-cv-01833-RFB-NJK (D.
25 Nev., October 10, 2025) as incorporated herein—Petitioner fails to demonstrate that he is
26 entitled to the relief he seeks.

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1 **III. Factual and Procedural Background**

2 Petitioner Bautista-Avalos is a citizen and national of Mexico. ECF No. 1 at ¶14.
3 On an unknown date and unknown time, he entered the United States without being
4 admitted, paroled or inspected. ECF No. 2 at 2. On September 16, 2025, Petitioner was
5 detained by DHS agents and charged with inadmissibility under 8 U.S.C.
6 § 1182(a)(6)(A)(i) and (7)(A)(i)(I), as an alien present in the United States who has not
7 been admitted or paroled and an immigrant present without an immigrant visa. *Id.* at 3.
8 He was then placed in removal proceedings under 8 U.S.C. § 1229a and issued a Notice to
9 Appear (NTA). ECF No. 2 at 6. Petitioner is currently detained at the Nevada Southern
10 Detention Center pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 1 at ¶40.

11 On October 2, 2025, Petitioner filed a motion for bond reconsideration with the
12 immigration court. ECF No. 2-1 at 3. The matter was set for hearing on October 7, 2025.
13 ECF No. 2-3 at 2. Following the hearing, the Immigration Judge found that Petitioner
14 was considered an “applicant for admission” and subject to the ruling in *Matter of Yajure-*
15 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) and denied Petitioner release on bond. ECF No. 2-3
16 at 3. The IJ noted, however, that Petitioner “was not a danger to the community and not
17 a flight risk and would have set bond in the amount of \$3,500 with ATD at the direction
18 of DHS.” *Id.* DHS did not file an appeal to the BIA. Though Petitioner reserved the right
19 to appeal, it does not appear that he has done so. ECF No. 1 at ¶51. Petitioner is
20 scheduled to have an individual hearing on his removal on November 3, 2025. *See* Exhibit
21 7-1.

22 **IV. Argument**

23 ***Incorporation By Reference of Government’s Prior Response***

24 Federal Respondents hereby incorporate by reference Federal Respondents’
25 Response to Petitioner’s Petition for Writ of Habeas Corpus in *Daniel Lucero Ortiz v. Michael*
26 *Bernacke, et al.*, No. 2:25-cv-01833-RFB-NJK (D. Nev., October 10, 2025) (“Lucero Ortiz
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1 Response”), as though fully set forth herein.¹ The Lucero Ortiz Response addresses identical
2 statutory and constitutional questions regarding DHS’s authority to detain individuals
3 under § 1225(b)(2)(A) who are not yet admitted and whose cases remain in pending removal
4 proceedings and any alleged due process violations stemming therefrom.

5 For efficiency and consistency, Respondents adopt the Lucero Ortiz Response in
6 full. The arguments in Sections I, II, and III, of the Lucero Ortiz Response are equally
7 applicable and incorporated by reference. Those sections demonstrate that detention under
8 § 1225(b)(2)(A) is mandatory by statute, not § 1226(a), and that DHS’s custody
9 determination and detention therefore complies with both statutory and constitutional
10 requirements.

11 (See Lucero Ortiz Response, ECF No. 7, at 1-23, attached hereto as Exhibit “A” and
12 incorporated herein by reference.)

13 V. CONCLUSION

14 For the reasons stated herein and in the Lucero Ortiz Response, Petitioner’s Petition
15 for Writ of Habeas Corpus should therefore be denied.

16 Respectfully submitted this 31st day of October 2025.

17 SIGAL CHATTAH
18 Acting United States Attorney

19 /s/ Summer A. Johnson
20 SUMMER A. JOHNSON
21 Assistant United States Attorney

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28 ¹ The Court has endorsed the incorporation by reference of prior government filings in related or substantively identical immigration habeas petitions, recognizing the efficiency of unified briefing given the number of overlapping cases presenting identical questions under 8 U.S.C. § 1225(b)(2)(A) and § 1226(a).